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Facebook, Inc.

CIV533328  
MPAR  
Memorandum of Points and Authorities in Reply  
1801037



SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN MATEO

SIX4THREE, LLC, a Delaware limited liability  
company,

Plaintiff,

v.

FACEBOOK, INC., a Delaware corporation;  
FACEBOOK IRELAND LTD., an Irish limited  
liability company; MARK ZUCKERBERG, an  
individual; CHRISTOPHER COX, an individual;  
JAVIER OLIVAN, an individual; SAMUEL  
LESSIN, an individual; MICHAEL VERNAL,  
an individual; ILYA SUKHAR, an individual;  
and DOES 1 through 50, inclusive;

Defendants.

Case No. CIV 533328

Assigned for all purposes to the Hon. V.  
Raymond Swope, Dept. 23

**FACEBOOK, INC.'S RESPONSE TO  
BIRNBAUM & GODKIN'S OBJECTION TO  
DISCOVERY CONFERENCE**

Date: May 3, 2019  
Time: 2:00 p.m.  
Ctrm: 23 (Complex Civil Litigation)  
Judge: Honorable V. Raymond Swope

FILING DATE: April 10, 2015  
TRIAL DATE: Not yet set

1 Defendant Facebook, Inc. ("Facebook") respectfully submits this Response to Birnbaum &  
2 Godkin, LLP's ("Birnbaum & Godkin") objection to the Court's May 1, 2019 order setting a discovery  
3 conference on May 3, 2019. Birnbaum & Godkin's objections are groundless and the discovery  
4 conference should proceed as scheduled.

5 **First**, the Court may schedule a discovery conference without providing five days' notice, and  
6 Case Management Order No. 1, Paragraph 11, does not contain any requirement to the contrary. The  
7 language quoted by Birnbaum & Godkin states that when a *party* schedules a discovery conference with  
8 the Court, "counsel for the *parties* shall . . . schedule a discovery conference . . . to occur no sooner than  
9 five court days after *delivery* of the last letter brief . . . ." Case Mgmt. Order No. 1 ¶ 11 (May 3, 2017)  
10 (first emphasis added). The requirement for parties to schedule a discovery conference a minimum of  
11 five court days after submission of the last letter brief is most likely intended for the Court's  
12 convenience, so that the parties are not pelting the Court with letter briefs at the last minute. Case  
13 Management Order No. 1 does not require five days' notice when the **Court** schedules a discovery  
14 conference.

15 **Second**, Birnbaum & Godkin received adequate notice of the discovery conference, and the  
16 scheduling of the discovery conference does not violate its due process rights. Both Mr. Godkin and Mr.  
17 Kruzer, attorneys at Birnbaum & Godkin, were recipients of the Court's email scheduling the May 3  
18 discovery conference. *See* Birnbaum & Godkin, LLP's Objection to Court Setting Discovery Conference  
19 [sic] on May 3, 2019 ("Objection") at Ex. A (May 1, 2019). **Four** of Birnbaum & Godkin's counsel  
20 from the firm Murphy Pearson Bradley & Feeney also were recipients of the Court's email. *Id.* (email  
21 CCing Mr. Murphy, Mr. Lassart, Mr. Mazzucco, and Mr. Leveroni). To the extent that Birnbaum &  
22 Godkin's Massachusetts counsel was excluded from the Court's email, Birnbaum & Godkin still received  
23 notice directly and through its four California counsel. Facebook disagrees with Birnbaum & Godkin's  
24 assertion that only Mr. Bolotin may address the discovery disputes relating to the subpoena to Mr.  
25 Godkin (an assertion for which Birnbaum & Godkin offers no support). But regardless, any of Mr.  
26 Godkin, Mr. Kruzer, Mr. Murphy, Mr. Lassart, Mr. Mazzucco, and Mr. Leveroni could (and may have)  
27 forwarded the Court's email to Birnbaum & Godkin's Massachusetts counsel. Birnbaum & Godkin  
28 cannot identify any specific due process rights that were violated, nor any authority for its assertion that

1 such rights were violated.

2 **Finally**, Facebook notes the hypocrisy inherent in Birnbaum & Godkin's assertion that the  
3 "court's order that letter brief's [sic] be submitted on less than 24 hours' notice is a further violation of  
4 Birnbaum & Godkin, LLP's due process rights as such a timeframe provides insufficient time for  
5 Massachusetts counsel to prepare a letter brief on behalf of Birnbaum & Godkin, LLP." The discovery  
6 conference is necessary to investigate, among other issues, Mr. Godkin's involvement in the violations of  
7 the Court's orders prohibiting Mr. Kramer's disclosures of Facebook's confidential and highly  
8 confidential information to the U.K. Parliament. On November 19, 2018, Mr. Godkin notified  
9 Facebook's counsel that Mr. Kramer allegedly had to disclose Facebook's documents to the U.K.  
10 Parliament by 9 a.m. Pacific time on November 20, 2018. Six4Three and its former legal team have  
11 insisted multiple times that this was adequate notice for Facebook to respond and attempt to prevent the  
12 disclosure of its documents to the government of a foreign nation. Yet the same amount of time is  
13 apparently insufficient for Birnbaum & Godkin's counsel to draft a letter brief, not to exceed seven  
14 pages, regarding objections to a subpoena. Birnbaum & Godkin's objection should be rejected.

15 For the foregoing reasons, Facebook respectfully requests that the Court hold the discovery  
16 conference as scheduled on May 3, 2019 at 2:00 p.m. Birnbaum & Godkin's objections are groundless,  
17 and Birnbaum & Godkin have not identified any specific conflict with the May 3, 2019, 2:00 p.m.  
18 hearing time.

19  
20 Dated: May 1, 2019

DURIE TANGRI LLP

21 Bv: \_\_\_\_\_



22 SONAL N. MEHTA  
23 JOSHUA H. LERNER  
24 LAURA E. MILLER  
25 CATHERINE Y. KIM  
26 ZACHARY G. F. ABRAHAMSON

27 Attorneys for Defendant  
28 Facebook, Inc.

1 **PROOF OF SERVICE**

2 I am employed in San Francisco County, State of California, in the office of a member of the bar  
3 of this Court, at whose direction the service was made. I am over the age of eighteen years, and not a  
4 party to the within action. My business address is 217 Leidesdorff Street, San Francisco, CA 94111.

5 On May 1, 2019, I served the following documents in the manner described below:

6 **FACEBOOK, INC.'S RESPONSE TO BIRNBAUM & GODKIN'S OBJECTION TO**  
7 **DISCOVERY CONFERENCE**

- 8
- 9 ☐ (BY U.S. MAIL) I am personally and readily familiar with the business practice of Durie  
10 Tangri LLP for collection and processing of correspondence for mailing with the United  
11 States Postal Service, and I caused such envelope(s) with postage thereon fully prepaid to  
12 be placed in the United States Postal Service at San Francisco, California.
- 13 ☐ (BY MESSENGER SERVICE) by consigning the document(s) to an authorized courier  
14 and/or process server for hand delivery on this date.
- 15 ☐ (BY FACSIMILE) I am personally and readily familiar with the business practice of  
16 Durie Tangri LLP for collection and processing of document(s) to be transmitted by  
17 facsimile and I caused such document(s) on this date to be transmitted by facsimile to the  
18 offices of addressee(s) at the numbers listed below.
- 19 ☐ (BY OVERNIGHT MAIL) I am personally and readily familiar with the business  
20 practice of Durie Tangri LLP for collection and processing of correspondence for overnight  
21 delivery, and I caused such document(s) described herein to be deposited for delivery to a  
22 facility regularly maintained by Federal Express for overnight delivery.
- 23 ☒ BY ELECTRONIC SERVICE: By electronically mailing a true and correct copy through  
24 Durie Tangri's electronic mail system from mafranz@durietangri.com to the email  
25 addresses set forth below.
- 26 ☐ (BY PERSONAL DELIVERY) I caused such envelope to be delivered by hand to the  
27 offices of each addressee below.

28 On the following part(ies) in this action:

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*Attorney for Birnbaum & Godkin, LLP*

11 I declare under penalty of perjury under the laws of the United States of America that the  
12 foregoing is true and correct. Executed on May 1, 2019, at San Francisco, California.

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Margaret Ann Franz